

**DIS**

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Democratic Institutions Support Project

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**JUDICIAL ADMINISTRATION PROJECT  
IN THE WEST BANK AND GAZA**

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**GLOBAL BUREAU  
CENTER FOR GOVERNANCE AND DEMOCRACY**

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## EXECUTIVE SUMMARY

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The project team successfully implemented all facets of the scope of work in judicial administration: two inaugural conferences were held in which more than 100 people participated, including the Palestinian Minister of Justice and the Director of USAID's West Bank and Gaza Mission; an Advisory Panel of 14 leading members of the Palestinian legal community was formed to supervise the project; and 13 workshops covering four different topics were held in the West Bank and Gaza in which approximately 100 judges, court administrators, and lawyers participated. In addition, a demonstration project in records management and administration was conducted in the Gaza and Ramallah District Courts.

The judicial sector currently faces several major obstacles that may hinder its development under autonomy, including the absence of unified laws and administrative procedures, unconsolidated lines of authority, and the absence of cooperative relations between the West Bank and Gazan legal communities. These challenges are politically sensitive, and it would be unwise to try to resolve them simultaneously or without Palestinian endorsement.

Until significant progress has been made in addressing these problems, the project team recommends against the implementation of any large or long-term assistance project, including a judicial training institute. Progress can be measured by: a) substantial steps toward the unification of the two distinct legal systems; b) clarification of the lines of authority within the legal community, especially those between the Minister of Justice and the Chief Justice; and c) lessening of the high level of distrust between the West Bank and Gazan legal communities. Once significant progress has been achieved in these areas, larger-scale activities, including possibly a judicial training institute, may be viable.

If initiated before substantive legal reform is undertaken, large projects may well result in the ineffective and unproductive use of scarce development resources. Although the establishment of a judicial training institute is feasible, only minor benefits will be realized at this time. However, the costs of such a venture will be quite high, as illustrated by the sample budget provided. Furthermore, the creation of a judicial training institute in the absence of modern and unified laws may have unforeseen negative consequences. Training based on the current obsolete and fragmented system might perpetuate the existing defective legal structures, while having little immediate practical effect in removing the obstacles currently facing the Palestinian legal community. Moreover, given the political sensitivity of these issues, moving prematurely ahead with large projects in this sector may exacerbate existing tensions within the Palestinian legal community.

We recommend that USAID help Palestinians focus on overcoming these obstacles through a series of small-scale activities that will both have tangible results and lead to the evolution of decision-making structures that can effectively guide judicial reform. This report describes 11 possible activities, including modernizing the court transcription process, computerizing the clerks' offices, standardizing and modernizing the case filing system, and improving the judicial archiving process. In addition to assisting the development of this important sector, implementing such projects would allow USAID to monitor the pace of reform in overcoming the three obstacles noted above.

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## SECTION I

### ASSESSMENT OF THE LEGAL/JUDICIAL SYSTEM

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#### A. Introduction

This section of the report assesses the aspects of the legal/judicial system in the West Bank and Gaza that were not considered in previous USAID-sponsored reports on the subject. This assessment provides USAID with supplementary information relevant to the consideration of a program for the general improvement of the administration of justice.

This assessment focuses on the changing dynamics within which the Palestinian legal/judicial system operates. Understanding the complexities and sensitivities of such an enabling environment is important to the success of any activity in the legal/judicial sector for the West Bank and Gaza. Previous USAID-sponsored reports focused on specific aspects of the multifaceted legal codes and structures. They did not take into meaningful account the rapidly evolving reality within which judicial activities will have to take place.

The consolidation of existing Palestinian systems of justice will be subject to the progress with the peace negotiations and the effectiveness of the self-rule EA. The dynamics of change are particularly relevant to the judicial sector, where substantial reform will have to occur to lay the foundations for durable institution building. This reform will entail developing a consensus and vision regarding key issues such as the unification of divergent legal structures, codes, and court administration procedures, as well as the clear delineation of lines of authority. In sum, it will result in bringing two distinct systems into one.

Mission programmers need to remain alert to be able to respond rapidly to shifting windows of opportunity. Key constraints to cost-effective assistance in the judicial sector must be identified and Palestinian progress in overcoming these obstacles monitored. Palestinian authorities increasingly recognize the importance of significant reform in this sector, suggesting that a more favorable environment for donor support may emerge as the transition to self-rule unfolds. But until the Palestinians themselves muster both the political will and capacity to overcome certain key constraints, their judicial sector will remain unable to effectively absorb the significant levels of donor assistance needed to support a comprehensive long-term reform program.

This assessment of the legal/judicial system is based on background knowledge and research, extensive interviews with key Palestinian actors in the sector, and lessons learned during the implementation of the judicial training activities described in Section III. Long-term technical assistance needs that are identified in other USAID reports are not given as much priority in this assessment as are the impediments that must first be resolved by Palestinians in the short term.

#### B. Evolving Operational Structures

Palestinian legal structures in the West Bank and Gaza that functioned prior to 1967 deteriorated dramatically during the extended period of Israeli occupation. Now, after almost 30

years of occupation, the Palestinians are faced with the task of building a functioning and effective legal system. Institutions are weak; legal procedures and codes are ambiguous; authority is exercised without adequate accountability or transparency; and adequate protection of human rights has yet to be established.

Institutions in place prior to Israeli occupation were essentially dismantled as the Israeli military came to play an increasingly dominant role in the Palestinian legal/judicial system. Courts serve as an example of the current state of Palestinian institutions. Four separate court systems with overlapping jurisdictions now exist under Palestinian authority. There are civil and criminal courts at the magistrate, district, and appellate levels in both the West Bank and Gaza, with other courts operating in the absence of clear guidelines regarding their jurisdictions. Military courts try members of the security forces accused of crimes. *Sharia* or Islamic law courts handle personal status matters, while the security courts address security-related offenses. This situation is complicated by the fact that no fully functioning and accredited law school exists in the West Bank or Gaza.

In addition to the confusion surrounding sources of law, the courts have functional weaknesses resulting from the disruption and discontinuity of multiple occupations. There is a severe shortage of judges, prosecutors, court administrators, and other court personnel. Court personnel sometimes occupy more than one position simultaneously, and cases frequently have to be postponed due to the absence of judges or lawyers. Decisions are often slow to be rendered and record keeping is poor, making access to previous decisions and reference to precedent difficult. Training of judges and other court personnel is of uneven quality; although judges and prosecutors must have law degrees, they often have not practiced for a substantial period of time before being appointed to these positions.

Prior to Israeli occupation, bar associations existed in both the West Bank and Gaza. They deteriorated dramatically, however, during the occupation, when many Palestinian lawyers in the West Bank refused to practice. In addition, the military government placed severe restrictions on Palestinian lawyers in forming a professional association in the West Bank. Consequently, no effective, unified bar association operated in the West Bank for almost 30 years.

Presently, the two systems draw upon Ottoman, British, Jordanian, and Egyptian sources, making the settlement of any particular case potentially confusing. In addition, despite a decree by Chairman Yassar Arafat reinstating laws in effect before the occupation, some Israeli military orders are still in effect because, according to the Gaza-Jericho agreement, extant Israeli laws and military orders remain valid unless changed in accordance with the agreement.

Decrees issued by the PA are the only new source of law, other than regulations that have been issued by the various ministries since the PA was established, according to the terms of the 1993 Declaration of Principles. As yet no constitutional mechanisms exist governing legislation. As a result, the PA gives the impression of exceeding its authority, and the legality of its decrees are in question. This situation will presumably change as the new Palestinian Council begins its work.

### **C. Existing Discontinuities in the Judicial/Legal Sector**

The patchwork nature of the current judicial sector, with its multiple overlapping legal

codes and structures, must be overcome for far-reaching development and meaningful judicial training to take place. For the moment, the major impediments to development in this sector are:

- The absence of unified laws and administrative procedures
- The absence of consolidated, clear lines of authority within the legal community
- The absence of cooperative relations between the Gazan and West Bank legal communities

#### **C1. The Absence of Unified Laws and Administrative Procedures**

The West Bank and Gaza have two completely different legal traditions and systems. The legal system in the West Bank is derived from the Napoleonic, continental tradition. Following the 1948 war, Jordan unilaterally annexed the West Bank (an action that was not recognized by the international community) and extended its legal system to the West Bank with minor modifications. Following its conquest of the West Bank in 1967, Israel allowed the practice of Jordanian law to continue, again with some modifications. However, post-1967 legal innovations in Jordan were not recognized in the West Bank under Israeli occupation. Thus, today West Bank law is largely the same as Jordanian law from the 1950s and 1960s.

The legal system in the Gaza Strip is based on the Anglo-Saxon, common law tradition, not the continental system. It dates from the British Mandate period, which lasted from the end of the First World War to the creation of the State of Israel in 1948. Unlike Jordan in the West Bank, Egypt did not annex the Gaza Strip when it controlled that territory between 1948 and 1967. Israel likewise allowed the extant legal system in Gaza to function, with modifications, following the 1967 war. Thus, British Mandate law, which Gazans refer to as "Palestinian law", continues to operate today in the autonomous areas of Gaza.

The need for legal unification is accepted by all parties. However, no significant process is in place to achieve it. A widely held opinion, shared by Ibrahim al-Daghma at the Ministry of Justice, is that teams of legal experts must be called in to evaluate conflicting laws, recommend adoption of one or another article, or draft new ones entirely. The Palestinian Council then must pass legislation to enact the new system. If this effort goes smoothly and rapidly, it will take at least two years to complete. It may take significantly longer than two years.

In a 1995 meeting between the Ministry of Justice, the Citizens' Rights Movement, and others, the Ministry agreed to the need for a Law Commission to review legislation and recommend new laws. However, the Ministry was unwilling to sponsor the Commission as an official body, indicating that it must have NGO status and outside funding. This was a further indication of the uncertainty of the unification process.

While most members of the legal community accept the need for unification, there is a strong tendency to advocate unification on one's own terms. In other words, Gazans often want West Bankers to adopt Gazan law, while West Bankers want Gazans to adopt West Bank law. While this sentiment is only natural, it is strengthened by a high level of distrust between the two legal communities (as discussed in Section II C.).

## **C2. The Absence of Consolidated, Clear Lines of Authority Within the Legal Community**

A second major problem resulting from the fragmentation of the Palestinian legal community is the absence of clear, consolidated lines of authority. This problem pertains to most of the DG areas in which the PA has been gradually asserting its authority. It is particularly acute in the judicial sector, however, because of the previous coexistence of multiple legal systems that now must be brought together under the auspices of a single Palestinian political entity. For example, no clear division of labor exists between the Minister of Justice and the Chief Justice in Gaza. Each believes to have the authority to decide on any number of matters, including judicial appointments, a judicial council, and a plethora of administrative issues. The rivalry has already been expressed through unilateral decisions by one or the other; for example, the Chief Justice recently appointed a judicial council to make judicial appointments, an action almost certainly taken without the knowledge of the Minister of Justice. Such confusion is not surprising. The Gazan system, based on Anglo-Saxon tradition, gives the Chief Justice, the *qadi al-quda'*, authority over these matters. Traditionally such a system would not even have a Minister of Justice, as that would be seen as a duplication of the Chief Justice's role. Mr. Arafat has exacerbated this ambiguity by granting partial ministerial status to the Chief Justice while retaining the Minister of Justice.

Further confusion is likely to develop in the immediate future if the Chief Justice in the West Bank, designated to become the Chief Justice, becomes a player in the Palestinian Authority. Will he have a status below or equal to that of the Chief Justice in Gaza or the Minister? How will he fit into this triangle? Who will decide these issues? None of this is yet clear.

A second unconsolidated line of authority is that of the Palestinian Attorney General's office. His level of authority in the West Bank is presently hotly contested by the West Bank legal community. Two recent decisions have prompted this reaction. First, after the PA took over Jenin, the Attorney General decreed that the Prosecutor's role there would be handled by Gaza (with its different law). This decision was widely criticized in the West Bank as illegal. More important, the Attorney General applied Gazan Law (Article 59) to withdraw criminal charges against a former mayor of Jericho—an action that is not allowed under West Bank law. Again, this decision was rejected out of hand by most jurists in the West Bank, and led to a petition drive against the Attorney General and legal assimilation in general. Will these decrees stand? More precisely, to whom does the Attorney General answer? It is not clear to the West Bank jurists, for example, that either the Minister or the Chief Justice has the authority to reverse these decrees. As a result, they petitioned Chairman Arafat directly on these matters.

A third unclear line of authority exists between judicial decision and police/civil service implementation. How effective will the PA be in implementing judicial decisions? On whose authority will legal papers be served? While implementation is substantially higher in Gaza (where multiple police and security forces operate) than in the West Bank (where, until the recent PA expansion, no Palestinian police force operated), it is still too early to tell how such implementation authority will be exercised.

### **C3. The Absence of Cooperative Relations Between the Gazan and West Bank Legal Communities**

A third major problem that has been exacerbated by the incremental competition of the two legal systems is the mutual suspicion between the West Bank and Gaza legal communities. The high level of distrust is demonstrated by the fact that, following the recent PA extension into the West Bank, some West Bankers began speaking openly of the *ihtilal ghazawi*, the Gazan occupation. Many in the West Bank continue to resent the fact that Gaza is emerging as the seat of Palestinian government power. The seat of Palestinian judicial power, whether the Minister of Justice, the Chief Justice, or the Attorney General, resides in Gaza, and the manner in which their authority has been recently extended to the West Bank has been greatly resented by the West Bank legal community. Decisions have been made in Gaza by decree or fiat, without consultation or notice in the West Bank. This has sparked a certain rebelliousness against the Gazan authorities among members of the West Bank legal community.

It must be hoped that the current high level of distrust between Gaza and the West Bank will subside as consolidation of PA authority in the West Bank continues, clearer lines of authority emerge, and a unified legal system evolves. While a certain level of uncertainty is to be expected during this transition, the absence of consultation between the two sides has been very problematic. The actual process of consolidation will be the deciding factor in the future relationship between the two legal communities.



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## SECTION II

### FEASIBILITY OF SUPPORT FOR A JUDICIAL TRAINING INSTITUTE

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The following assessment regarding the establishment of the judicial training institute is based on the experiences of the project team in implementing judicial training activities in the West Bank and Gaza. The evaluation factors in both these experiences and an analysis of the evolving enabling political environment in the West Bank and Gaza. This analysis is based upon existing knowledge and contacts with key political and judicial actors within both the West Bank and the Gaza systems. In both regions, judges, practicing attorneys, judicial officials, and other relevant actors were consulted.

A major recommendation of the project team is that until basic structural reforms of the legal system are made. The establishment of a judicial training institute is neither technically sound nor cost effective. This section outlines the major impediments that would likely undermine the creation of an effective judicial training institute and make investment in long-term projects premature at this time. In short, given the current lack of a unified legal system, support for establishing a judicial training institute would not be an effective use of USAID resources. Rather, USAID should work to improve the legal environment in the West Bank and Gaza in order to improve the prospects for establishing an institute in the future. By promoting a series of short-term, interim activities, USAID can assist the Palestinians in creating a unified and effective judicial system.

The preceding assessment of the fragmented character of the judicial sector and its changing environment identified three major constraints to development of the judicial sector:

- The absence of unified laws and administrative procedures
- The absence of consolidated, clear lines of authority within the legal community
- The absence of cooperative relations between the Gazan and West Bank legal communities

The following sections outline the effect of these constraints to the establishment of the training institute:

#### **A. The Absence of Unified Laws and Administrative Procedures**

Legal unification is a necessary precondition for a successful judicial training institute. The difficulties are best illustrated by the fact that despite widespread recognition among Palestinians of the need for appropriate reform and legislation towards this end, no significant process is yet in place to achieve the requisite unification. In addition, members of the two legal communities tend to advocate a unification that would consolidate their own system at the expense of the other.

The lack of legal unification will be detrimental to a judicial training institute and any other long-term project in the Palestinian legal sector. If established, the judicial training institute would be required to operate under less than desirable conditions, such as:

- Training exclusively in Gazan or West Bank law. Such an approach would be

ineffective, however, as the final form of the unified legal code is uncertain at this point.

- Establishing two separate institutes, one for each legal system. This course of action would only strengthen the disunity of the legal system. Furthermore, those trained exclusively in one legal tradition would not be prepared to function effectively in whatever unified system is ultimately agreed upon.

Therefore, only projects that are not caught up in the disparity between the legal codes can be recommended (see Section III). The problems of competing legal systems and administrative procedures were encountered even in our pilot demonstration project of records management. Differences on a relatively minor issue such as the design of case file folders proved difficult to overcome.

The unification of laws and administrative procedures is absolutely central to the successful creation of a judicial training institute or implementation of any large or long-term project in this sector. To proceed with such assistance projects in the absence of unification would waste resources. Given its inherent difficulties, legal unification will be time consuming. Its realization is above all a political rather than a technical matter. Until it is accomplished, USAID is well advised to focus its activities in this sector on short-term, self-contained projects in areas that are not affected by the myriad of legal codes.

#### **B. The Absence of Consolidated, Clear Lines of Authority within the Legal Community**

A second major constraint to the establishment of a judicial training institute is the lack of a clear chain of authority. The lack of consolidated lines of authority has made it difficult for mutually beneficial roles and responsibilities to be worked out between the key figures of the two systems. Roles and responsibilities must be clarified at all levels. For example, the current competition between the Minister of Justice and the Chief Justice in Gaza is a potential problem, because each would tend to seek to "own" projects such as a judicial training institute. No clear division of labor or authority exists between these two players. Each believes he has the authority to decide on any number of matters, including judicial appointments, the composition of judicial councils, and a plethora of administrative issues. The project team witnessed a bit of this rivalry; because the project was designed to work with the Ministry of Justice, the Chief Justice in Gaza expressed some discontent. Likewise, the Ministry did not want to cede much decision-making to the judiciary. The limited scope of our project allowed the team to avoid more intense rivalry, since the stakes were not high. However, given the competition over the relatively small scope of

#### **Data Base Project Illustrates Prevailing Uncertainties**

As the Project Team prepared to leave the area in December 1995, the Law Center at Bir Zeit University was on the verge of signing a contract with the Ministry of Justice to compile a data base of all Ottoman, British, Jordanian, Egyptian, and Israeli laws that still have legal weight in the West Bank or Gaza. Dr. Camille Mansour, Director of the Center, optimistically predicts that the data collection will take one year. There is no accepted strategy on how to proceed once the data base is complete. A widely held opinion, shared by Mr. Ibrahim al-Daghma at the Ministry of Justice, is that teams of legal experts must be called in to evaluate the conflicting laws and recommend adoption of one or another article (or draft new ones entirely). The Palestinian Council must then pass legislation to enact the new system. If this effort goes smoothly and rapidly, it will take at least two years. It may take significantly longer than two years. In addition to the many problems this process will face, Mr. Daghma, a key player in this process, may be affected by the election of the Council. The uncertainties of the data base project brought about by the lack of measurable progress towards unification demonstrate why it would be unwise to proceed with establishing of a judicial training institute.

our project, it is clear that larger projects such as a judicial training institute would likely fall victim to such rivalry until relationships of authority in this sector are clarified significantly.

**The basic building blocks of authority upon which a successful judicial training institute can be built are not yet in place.** Gaza has been under PA control for nearly two years and many of the problems are no closer to being resolved than they were two years ago. Projects seen to favor one "side" (the Minister of Justice, for example) may well be undermined by the other (the Chief Justice, for example). The consolidation of clear lines of authority can be accomplished only by the Palestinians themselves; USAID would be well advised to limit investment in this sector until authority relationships are significantly clarified.

That said, USAID may be in a position to indirectly assist Palestinians in consolidating lines of authority through a series of small, carefully thought out, incremental activities, similar to those undertaken in the judicial training activity described in Section III. Specifically, the process of consolidating lines of authority is likely to be incremental, rather than settled unilaterally at one stroke. Therefore, USAID could facilitate this process by helping the Palestinians focus on a series of small but necessary reforms that simultaneously provide the Palestinians in the judicial sector with the opportunity to clarify roles and relationships while addressing significant, but not politically challenging issues. If implemented carefully, the projects discussed in Section III, for example, would indirectly help clarify authority relationships in this sector.

### **C. The Absence of Cooperative Relations between the Gazan and West Bank Legal Communities**

A third major obstacle to the establishment of a judicial training institute is the high level of competition between the two legal communities. The lack of cooperation and transparency during the recent PA extension into the West Bank has aggravated certain rivalries between them. In short, the seat of Palestinian judicial power resides in Gaza, and the manner in which this authority has been extended to the West Bank has been greatly resented by the West Bank legal community. Decisions have been made in Gaza by decree or fiat, without consultation or notice in the West Bank.

Moreover, this distrust has a political cultural element. Put bluntly, West Bankers view their judicial system as somewhat advanced than their Gazan counterparts, an attitude that has led to friction between the Gazans and West Bankers. That the center of

#### **Project Team Witnesses Distrust Between Legal Communities**

The project team witnessed what amounted to open rebellion by the West Bank legal establishment against their Gazan counterparts. At the time of this assessment, the Chief Justice in Gaza had recently appointed a five-man judicial council that has an ambiguous mandate, but that apparently includes the review of judicial qualifications of potential judges. Of the five jurists included, four were from Gaza. No consultation about or notification of this decision was undertaken in the West Bank. In response to such decisions by decree, over 400 West Bank lawyers and judges signed a petition to Mr. Arafat in December complaining about the form and substance of many of these decisions. A climate of mutual distrust and resentment grew between the two legal communities.

The project was affected by these developments in two ways. First, the full Advisory Panel meeting, which was logistically difficult to begin with, took place at the height of these developments. The result was an obviously "cool" meeting between the two sides. While the Project Team had hoped the Advisory Panel would set a date for its next meeting (after our departure), that was impossible given the state of relations. The small demonstration project in redesigned case file folders was likewise affected. After news of the West Bank petition drive broke, it was difficult to achieve consensus on a standardized case file system to be used in both Gaza and the West Bank.

Palestinian power and decision-making is now located in Gaza does not sit well with most West Bankers. Likewise, Gazans who resent the traditional focus on the West Bank at their expense fear that, if given the opportunity, West Bankers will take total control. Thus, Gazan decisions concerning the West Bank have been made by decree, not through consultation.

**As long as there is tension and distrust between these two distinct legal communities, assistance projects such as a judicial training institute will be undermined.** The current distrust between Gaza and the West Bank may well subside—or remain high—as the consolidation of PA authority in the West Bank continues. The direction it takes will depend on the consolidation process. However, if current trends continue, there is no reason to believe that this distrust will ease anytime soon. If projects are deemed too “Gazan” by West Bankers or too “West Bankish” by Gazans, they may well be undermined. Like the unification of laws or the clarification of authority relationships, the process of reducing distrust to a level where projects can be successfully implemented will take time.

#### **D. Costs, Benefits, and Optimal Means**

**Costs.** Although the establishment of a judicial training institute is not recommended, an estimate of potential costs has been provided in Annex E.

**Optimal Means.** The most optimal means of providing judicial training to Palestinians given the constraints discussed above is the establishment of two separate judicial training institutes, one in the West Bank and one in Gaza. Training in legal topics such as civil and criminal laws, evidence, and court procedure would have to be based on current legal codes, as it is uncertain what shape the unified legal code will take. However, both legal systems are badly in need of major revisions and reforms. Training based on the current dual legal structures would be likely to inhibit reform, harden positions, and be obsolete once reform occurs.

In fact, establishing a judicial training institute at this time may add to the friction between these parties depending on which sponsors the judicial training institute. The alternative would be to establish a separate institute for each system. However, training in two separate systems would only strengthen the disunity of the sector. Thus, in order to provide relevant training prior to legal reform, the two judicial training institutes would be limited to existing systems.

**Benefits.** Although the above suggestion presents the best option if the judicial training institute is established immediately, the potential benefits are few. The principle tangible benefit a judicial training institute can offer at this time is an improvement in the clerical skills of the respective judicial personnel. While this is a worthy goal, it does not merit the costs (see Annex E) which would be incurred. Furthermore, given the absence of modern and unified laws and the friction between various parties already identified in this report, to proceed with a judicial training institute in any form may have unintended negative results. Additional friction between the legal communities and various authorities might result, and the existing defective legal system might be perpetuated. The minor benefits of the immediately establishing a Judicial training institute are therefore far outweighed by the high cost and the serious potential for slowing the pace of reform.

## **E. Conclusion**

No significant legal or institutional framework currently exists to undertake projects such as the judicial training institute. Major reform must first take place before such large or long-term projects should be contemplated in this sector. These reforms—legal unification, authority consolidation, and diminished distrust between the two legal communities—can be implemented only by the Palestinians themselves.

While USAID should avoid moving ahead too rapidly with a judicial training institute at this time, it can indirectly assist the Palestinians in overcoming these obstacles by structuring focused, self-contained, small-scale activities that will require decisions and activities by the Palestinians in the judicial sector. By employing such a strategy, USAID could help Palestinians clarify lines of authority and build confidence between the West Bank and Gazan legal communities. Recommendations for a number of such activities follow in the next section.

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## SECTION III

### REPORT ON TRAINING ACTIVITY

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#### A. Project Overview

This project fulfilled all the requirements in the scope of work: (1) hold an inaugural conference to "kick-off" the project; (2) form a Palestinian Advisory Panel to oversee the project's implementation; (3) conduct a series of seminars in Gaza and the West Bank to train judges and court administrators in concepts and procedures of judicial administration; and (4) provide recommendations for further assistance in this sector, including the feasibility of a judicial training institute.<sup>1</sup> In addition, the project team, under the Mission's direction, undertook a demonstration project. Project activities are summarized below:

##### A1. Inaugural Conferences

Although the scope of work called for a single inaugural conference, the often-closed borders of Gaza and the West Bank made travel between the two areas virtually impossible for most Palestinians. As an alternative approach to fulfill the goals laid out in the scope of work, the project sponsored two conferences, one in Gaza and another in the West Bank. The Gaza conference was held 4 November 1995 at the Rashad Shawwa Cultural Center in Gaza City. It was attended by 50 participants, including judges, lawyers, administrators, and members of the Ministry of Justice. The Minister of Justice, Freih Abu-Middain, attended the conference, delivered the opening address, and was an active participant in the conference proceedings. The conference was chaired by Ibrahim al-Daghma, chairman of the Council on Fatwa and Tashri'a at the Ministry of Justice, and chair of the Advisory Panel.

The West Bank inaugural conference was held 20 November 1995 at Bir Zeit University, near Ramallah. The conference was attended by over 50 participants from the West Bank legal community, and was chaired by Ibrahim al-Daghma. The opening address at the conference was given by Christopher D. Crowley, director of the USAID West Bank and Gaza mission.

Both conferences were designed to discuss specific needs in the realm of judicial administration, and to allow the Court Administration Specialist (CAS), Raymond Arce, to finetune material in the training courses to meet those needs. The conferences met those goals and served as a forum to discuss larger challenges facing the Palestinian legal community.

##### A2. Advisory Panel

The project established a 14-member Advisory Panel, with even representation from the Gaza and the West Bank, which oversaw the implementation of the training courses as well as a pilot training project (see A4. below). The Advisory Panel consisted of members of the Ministry of Justice, judges from Magistrate, District and High Courts in both the West Bank and Gaza, and lawyers.

In addition to these members, two other key members of the Palestinian judiciary participated in the joint Advisory Panel meeting: Judge Nahid al-Reyyes of the High Court in Gaza (and chief judicial administrator for the court), and Judge Amin Abd al-Salam, chief justice

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<sup>1</sup>The Scope of Work can be found in Annex A.

for the District Court in Jericho and chief justice-designate for the High Court of Appeals in Ramallah.

#### **Members of the Advisory Panel**

1. Ibrahim al-Daghma, President of the Council on Fatwa and Tashri'a at the Ministry of Justice; Chair of the Advisory Panel
2. Hasan Abu Libdeh, the Director-General of the Ministry of Justice
3. Attorney General Khalid al-Qidre
4. Judge Hamdan Abadleh of the High Court of Gaza
5. Judge Husayn Abu 'Asi of the District Court of Gaza
6. Judge Hani Natour of the Ramallah Magistrate Court
7. Judge Abdallah Ghuzlan of the District Court of Ramallah
8. Judge Shukri Nashashibi of the High Court of Appeals in the West Bank
9. Dr. Ali Khashan, Dean of the Palestinian School of Law
10. Omar Hamidan, attorney, and Chief Clerk of the Ramallah District Court
11. Ibrahim al-Saq'a, practicing senior attorney in Gaza
12. Tawfiq Abu Ghazaleh, practicing senior attorney in Gaza and former Director of the Gaza Center for Rights and Law
13. Nabil Mushahwar, practicing senior attorney in West Bank
14. Dr. Camille Mansour, Director of the Bir Zeit University Law Center

The Advisory Panel met six times. Two meetings were held by the Gazan members of the Advisory Panel in preparation for the Gaza conference and the subsequent training courses. Three meetings were held by the West Bank members of the Advisory Panel: one in preparation for the conference, one during the training courses to evaluate their progress, and one at the conclusion of the courses. In addition, a joint meeting of all members of the Advisory Panel was held near the conclusion of the project on 14 December 1995 at the Bir Zeit University Law Center to evaluate the overall success of the project and discuss future steps in the area of judicial administration. Because of the inordinate difficulties involved in obtaining passes for Gazans to travel to the West Bank (reverse traffic is impossible), the very fact that the meeting took place was a major accomplishment.

Finally, project team members were in virtual daily contact with Ibrahim al-Daghma, the Chair of the Advisory Panel. As director of the council on Fatwa and Tashri'a, Mr. Daghma was then responsible for all legislative activity for the ministry of justice

in the absence of a national legislative body. As part of that role, he took the lead in the process of legal unification in the West Bank and Gaza. The Minister of Justice appeared to defer to Mr. Daghma on all technical issues relating to law and its administration.

### **A3. Training Courses**

The single most important task of the project as indicated by the scope of work was offering training seminars, or workshops, in judicial administration to judges and court administrators in Gaza and the West Bank. To that end, 13 workshops were held in which approximately 100 Palestinians participated. The four courses offered in both Gaza and the West Bank were:

- Leadership
- Planning
- Problem-solving
- Introduction to case-management

These four topics were covered in six sessions each in the West Bank and Gaza, involving 82 participants (see Annex B for the complete list of workshop participants). Personnel from all District and Magistrate Courts in the West Bank and Gaza, and both High Courts (Gaza and Ramallah), attended the workshops. The workshops were held at the Shawwa Cultural Center in

Gaza and the Law Center at the Bir Zeit University in the West Bank. In addition, at the request of the Bar Association in the West Bank, an additional abbreviated course, held at the Ramallah Courthouse, was given to approximately 20 training lawyers<sup>2</sup> in the West Bank. The courses were extremely well received in both the West Bank and Gaza.

During the training seminars, the CAS used a variety of materials—all translated into Arabic by project team members—adapted from compatible legal systems to better fit this specific context. The material ranged from competing rules of court and specific job descriptions for court employees to reports on development objectives and strategy by judicial councils. Seminar participants clearly appreciated such material being translated into Arabic, which facilitated their practical application to their problems.

The CAS encouraged active participation by the Palestinians in the workshops. Since the presented material was selected with an eye toward practical implementation in Palestinian courts, seminar participants would frequently relate common problems to the area of judicial administration being discussed. Thus, the CAS was sensitive to the importance of addressing real problems that arise in the Palestinian courts and presented material demonstrating how these problems have been dealt with effectively elsewhere. The structure of the discussion was open and fluid, encouraging energetic participation. All indications, including the large and regular attendance, suggest that the seminars were very well received. A more detailed of the Palestinian response to the activity follows.

#### **A4. Demonstration Project**

Citing recipient fatigue—specifically, the number of legal consultants who had passed through Gaza without leaving behind any tangible benefit to the Palestinian legal community—the Ministry of Justice urged that our project result in a “practical” outcome. Thus, at the specific request of the Ministry of Justice, and with the approval of the Mission and the Democratic Institutions Support project, the project team implemented a small demonstration project in the Ramallah and Gaza District Courts at the conclusion of the training courses.

The demonstration project included a partial physical reorganization of the Gaza District Court Clerk’s office as a first step toward enhancing work efficiency. The reorganization included the installation of a small counter in the clerk’s office to better define and maintain administrative work space. Previously, lawyers could enter all areas of the clerk’s office to file various papers, a practice disruptive to administrative operations. A complete list of recommendations for this reorganization can be found in Annex C.

Further, a limited training program in the use of redesigned case file folders was undertaken in the Ramallah and Gaza District Courts with the goal of demonstrating modern records management practices. This project is discussed further below.

#### **B. Participant Response**

Participant responses to the training courses were extremely positive, as were responses to the demonstration project. As for the training courses, participants, representatives from the

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<sup>2</sup>Lawyers in the West Bank generally spend their first two years following graduation in training with “master lawyers” before going into private practice.



Ministry of Justice, members of the Advisory Panel, and members of the Bir Zeit University Law Center all expressed great satisfaction. In contrast to other recent training experiences they had, the basis of their satisfaction was that the courses offered through this activity emphasized practical, hands-on training issues that could be utilized and implemented in the courts. The aspects of this training project that were singled out most consistently for praise were its practicality and applicability, and the usefulness of the materials. Various participants expressed displeasure with other projects that included nice lectures and meetings but contained few, if any, practical elements.

Perhaps the best indicator of success was the high rate of attendance despite logistical difficulties. Participant satisfaction with the material was clearly demonstrated by the consistently high turnout for every training course. This was particularly true in the West Bank, where participants traveled from Jenin, Tulkarim, Qalqilya, and Hebron (and elsewhere) *for each session*. The Ministry of Justice, through both Mr. Daghma and Hasan Abu Libdeh, the director-general of the Ministry of Justice (and a regular participant in the Gazan training courses) likewise expressed their satisfaction to us on a number of occasions, asking that future projects also focus on practical training. Importantly, the director and assistant director of the Bir Zeit Law Center—again, regular attendees at the courses—expressed strong support for the project. Having witnessed a number of flawed projects undertaken by various donors in this sector, their praise was particularly encouraging.

From a technical perspective, the demonstration projects were also well-received. Satisfaction was expressed regarding the immediate benefits of the small scale projects that were tailor-made to their demonstration settings. However, the principal accomplishment of these activities were what they revealed to both the team and the participants about the subtleties and sensitivities involved in implementing development activities in the context of an evolving and disjointed judicial sector. For example, obtaining agreement on basic administrative issues required decisions at high levels. The participants' awareness of the need for reform was clearly heightened by these unexpected aspects of the demonstration projects.

Other aspects of the participants' response to the demonstration projects were also noteworthy. First, as mentioned above, the project took place during the height of tension between the West Bank and Gazan legal communities. This distrust was manifested in part in accusations that the final case file folder looked too West Bankish (for Gazans) and too Gazan (for West Bankers). Second, many Palestinian jurists are anticipating that donors will be building new courthouses, judges chambers, and the like, and greeted the small demonstration project—including installing a new counter in the clerk's office in Gaza—with a "that's it?" attitude. For those wanting a new courthouse, a small counter in the clerk's office in Gaza was wildly insufficient. Judges in particular viewed their needs as far more important than those of the clerk's office.

The clerks in Gaza were extremely pleased with the reorganization of their work space. We anticipate increased administrative capacity in that office from these small changes alone. In addition, our research into the case filing system exposed a number of differences of which Palestinian judges and lawyers were unaware. For example, the courthouse in Nablus does not include the prosecutor's report in the case folder that the judge sees, whereas in Ramallah the report is included, prejudicing the defendant in a criminal case. Such differences caught the eye of several judicial reformers who want to push for changes along the lines we recommended. For these and other reasons, we believe that the lessons learned through the model filing system will encourage the Palestinians to pursue court administration improvements of this nature.

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## SECTION IV RECOMMENDATIONS

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The scope of work called for the project team to make recommendations both for the feasibility of establishing a judicial training institute/reform commission and for follow-up activities in court administration. To this end, project members undertook significant research in the administrative offices of a number of courthouses in the West Bank and Gaza and interviewed key members of the Palestinian legal community on these topics.

As explained in Section II, there are major obstacles to establishing a judicial training institute or undertaking other large assistance projects in this sector. When the preconditions for establishing a viable Judicial Training Institute are met—that is, when significant steps have been taken to unify West Bank and Gazan laws, to clarify lines of legal authority, and to ease the tension between the West Bank and Gazan legal communities—the issue of the feasibility of a Judicial Training Institute should be reconsidered.

Rather, the project team recommends that a series of small-scale activities be undertaken that would help develop this sector and, at the same time, assist the Palestinians in meeting those preconditions. Such projects include modernizing the court transcription process, computerizing the clerks' offices, standardizing and modernizing the case filing system, and ameliorating the judicial archiving process. Such projects not only would allow Palestinians the time needed to clarify the lines of authority in the legal sector, but would assist in the clarification process by compelling the Palestinians to confront the issue. At the same time, implementing small projects means that the stakes would not be so high as to risk squandering valuable development resources. Eleven small, self-contained, but essential projects are described below.

### A. General Recommendations

The primary challenge for USAID in this sector is to configure development assistance to produce short-term tangible results that immediately improve the administration of justice and help the Palestinians build decision-making structures and processes that allow emerging judicial institutions to take ownership of judicial reform in the long term. At the same time, given the major obstacles that currently confront this sector, USAID should avoid large, expensive projects that may not only be an ineffective use of valuable resources, but also exacerbate the problems discussed above. That is, a large project would introduce further competition into an already fragmented system, aggravating the extant problematic relationships of authority in this sector. By lowering the stakes with smaller projects, the likelihood of internal political considerations undermining USAID projects would diminish.

USAID can accomplish this task by implementing a technically sound, well-designed series of small projects that not only brings about tangible improvement but also helps Palestinians develop structures and processes to enhance long-term judicial reform. USAID could thus help facilitate the process by which Palestinians meet the preconditions for larger and more productive assistance in the future, without getting entangled in the immediate and politically sensitive obstacles in the legal sector, by gradually building on small successes linked to further reform. There would be a simultaneous strengthening both of the material base of the legal sector and of that sector's institutional capacity to undertake further improvement. In short, such a "building block strategy" by USAID would help Palestinians take the necessary steps to implement effective judicial reform and legal modernization over time.

Three general recommendations follow logically from this discussion. First, no large or long-term projects should be implemented in this sector at this time, including a judicial training institute. As was noted above, there is no single legal or administrative system in which to train judges. The alternative would be to establish two separate institutes, one each for the West Bank and Gazan systems. However, this would perpetuate legal division, in direct contradiction to the stated Palestinian goal of legal unification. When the two systems have been merged or, at least, the contours of the future Palestinian legal system are clear, then this issue should be re-evaluated.

The long-term need for a judicial training institute is manifest; however, the timing of undertaking such an assistance project is important. It may well be that the pace of reform will be accelerated as a result of general Palestinian institution building following the recent council elections, but it is unlikely that sufficient reform will have occurred within two years for a judicial training institute to play a useful role in the legal sector. Likewise, an authoritative Judicial Council or Judicial Reform Commission will be needed in the future, but should only emerge incrementally as the need for such a body is gradually demonstrated. The project team has established an Advisory Panel that could evolve into a judicial reform commission in the future, and recommends that the Mission monitor and nurture its development. During the last advisory panel meeting, the panel dissolved itself as our project concluded. However, we were told by participants over the course of the next several days that the panel could easily be reconstituted if a need arose. We encourage the Mission to consider means to reactivate a version of this panel.

Second, the project team recommends that a series of small, self-contained, short-term practical projects be undertaken in the absence of a larger assistance program. Such projects must be independent of questions of law, so as to avoid the conflict between West Bank and Gazan law. The only exception to this may come in the form of technical assistance in drafting the new legal code, but only if the Palestinians themselves demonstrate a seriousness of purpose toward legal unification. Each project should take no more than three or four months to implement and be kept at a low level to avoid struggles between the judiciary and the Ministry of Justice (given the ambiguous lines of authority described in Section I). Moreover, project teams need to be granted flexibility to assist in small, related assistance needs that may arise during the course of implementation. Such flexibility can enhance the process of confidence building in the community.

While large projects may inadvertently exacerbate structural weaknesses in the legal sector by creating high stakes competition to control the "prize," small projects have a higher probability of encouraging cooperation and clarifying authority gradually through practice. Such cooperation would be further strengthened by the **consecutive** implementation of small projects: incremental cooperation and effective implementation of small-scale reforms would gradually pave the way for more significant measures. In short, confidence-building measures through limited activities are preconditions to major initiatives.

Another key advantage of undertaking a series of small projects in lieu of a larger immediate assistance program is that small ongoing projects would allow USAID to track developments closely in the three major problem areas detailed in Section II. By having a continuous presence in the Palestinian courthouses, USAID will be able to better judge when the sector is ready for a more substantial assistance program, such as a judicial training institute. A continuity in development personnel would enhance both USAID's ability to monitor the sector and the level of confidence among Palestinians that the sector is taken seriously.

Third, close coordination with the larger donor community is essential. Coordinated

assistance can be structured to encourage Palestinians to undertake the reforms necessary to justify a larger donor commitment to this critical sector in the future. Disparate, uncoordinated donor assistance to this sector may well do more harm than good over the long term, as an incentive structure to encourage that essential steps be taken for true legal development may be absent.

## **B. Specific Recommendations**

In light of the above recommended guidelines for small, practical projects in this sector, the project team has compiled a list of possible assistance projects in the judicial administration sector that respond to specific, noted needs. Thus, this section discusses and recommends self-contained projects that would be ideal follow-up projects to the present judicial administration project. All these projects can be undertaken within the context of current regulations and procedures, and are not dependent on the unification of legal codes. Moreover, many of the suggested projects have built-in flexibility. That is, they can be carried out either system-wide or as a demonstration project in a specific courthouse. This is particularly true of the first three recommended projects, which we believe are the most appropriate projects to undertake in the near term.

### *Recommendation #1: Electronic Recording of Proceedings.*

Currently, a court reporter manually records witness testimony word for word. In Gaza, the handwritten record then is transcribed on a computer using word processing software.

In the West Bank, witness testimony and other proceedings are in colloquial Arabic. The trial judge then dictates what is to be recorded in classical Arabic. It is the judge's dictation that becomes the official court transcript of the testimony. Attorneys may suggest different wording to the judge when, in their view, the classical Arabic version does not capture the witness' testimony.

Clearly, this is another instance of divergent practices between the West Bank and Gazan courts that must be reconciled. While the practice in Gaza is closer to modern court reporting methods, this issue should be studied and reconciled by the judiciary and lawyers from both the West Bank and Gaza.

In Gaza, multichannel tape recorders could be used in place of the court reporter. A few California trial courts use this technology under special legislation authorizing experimentation with alternative forms of recording trial proceedings.

Microphones are placed on the bench, the attorneys' table, and the witness box; one for each participant in the proceeding. At the conclusion of predetermined activities, for example, a calendar call, or hearing of a specific matter, the audio cassette is removed and given to a transcriber. The recorded proceeding is prepared into a written form using a transcribing machine and a typewriter or computer.

The District Court lacks qualified court reporters and is forced to use any available clerk to manually record proceedings. As a result, in many cases the quality and accuracy of the court record is questionable and may adversely affect a party's rights. In addition, the regular work of

the clerks suffers as they are pressed into reporting tasks. Electronic recording is a viable solution to the shortage of court reporters.

In sum, an electronic recording implementation project would modernize the court transcription process. It would dramatically increase the accuracy of the formal record, it would solve the problem of the scarcity of court reporters, it would expedite the trial process by eliminating delays caused by the use of manual transcription, and it could be implemented quickly and relatively inexpensively. USAID should consider the possibility of key personnel, both judges and court reporters, visiting other courts, such as those in California, to observe how this system works in practice.

*Recommendation #2: Forms Standardization.*

The District Courts are slowly moving toward standardizing certain forms used repeatedly. For example, in the Gaza District Court, subpoenas contain a standard text and standard format. These are photocopied onto a uniform piece of paper with areas provided to enter the name and address of the summoned person, court and other information.

The objective of a forms standardization project would be to analyze all court forms for the purpose of eliminating unnecessary forms or text, standardizing text and format, and providing pre printed form sets. Each standard form would have areas to enter variable information. In addition, a form numbering system would be utilized to facilitate reordering and to track revisions.

Using standard pre printed forms eliminates needless handwriting and reduces errors. It supports and facilitates the adjudication process by providing readable and more accurate information located in the same place for each case.

*Recommendation #3: Computer Support of the Clerks' Offices.*

Both clerks' offices in the Ramallah and Gaza District Courts use various log and register books to record and control documents and document movement. This work is labor intensive as all entries are handwritten.

Manual registers and controls present several operational problems. First, such a system is prone to errors. Second, verifying the status of particular documents is slow because it too is a manual process. Third, retrieving information, whether on an aggregate or individual basis, is also time consuming and often requires that the person making the inquiry have specific information regarding the document in question, such as the date transmitted. Usually the person seeking information knows only the name of one party and the issue involved. These information searches can be frustrating, time consuming for everyone involved, and unproductive.

Computer support would eliminate or replace the logs and registers utilized in the clerks' offices in both the Ramallah and Gaza District Courts, as well as in other courts in the West Bank and Gaza. Name, subject matter, date, and other indexes would facilitate searches and provide the basis for both aggregate and individual information retrieval.

The first candidate for computer support should be the correspondence register in the Gaza District Court. The objective would be to eliminate the current manual correspondence register and to track all correspondence using a computer application program for that purpose.

In short, such a small computer network in the clerk's office would enhance all manner of

administration in the courts, including case filing, dockets and registers, daily court schedules, notices and subpoenas.

*Recommendation #4: Implement and Expand the Case Filing System to other Courts.*

The small demonstration project our Project Team undertook aimed at suggesting tangible improvements in the case filing systems in the Gaza and Ramallah District Courts. We recommend that a concerted program to modernize the case filing systems in all Palestinian courts be undertaken. Specifically, the expansion of the improved case filing system to other District Courts, the High and Magistrate Courts is a logical follow up project. Implementation in the remaining seven District Courts, for example, could be completed within four to six months.

As with any project, the expansion of the case filing system should only be undertaken with the consent of the Palestinians themselves. We believe our troubles with implementing a unified case file folder system stemmed primarily from political tensions between the West Bank and Gaza legal communities which was particularly high during the extension of PA authority in the West Bank. If tensions ease, we do not view the differences between the case filing systems as insurmountable.

*Recommendation #5: Establishing a Records Management Program and Judicial Archives.*

The Palestinian judicial system, with tribunals in the West Bank and Gaza, lacks a comprehensive court records management program. There is no program for long term storage, access and retrieval, and destruction of case files at pre determined periods after dispute resolution.

Archiving resources are inadequate from a quantitative and qualitative perspective. Documents can and have been destroyed due to current practices and environmental factors; that is, pests, water damage, and lack of suitable storage facilities, equipment, and practices. The low level of security found in the judicial archives also potentially compromises document integrity.

Currently, available storage facilities are used to store closed case files. In the Ramallah District and Magistrate Courts, for example, automobile garages contain both exhibits and file folders of resolved cases. These storage facilities are inadequate for storing documents. There is real danger that some or all of these documents may be damaged or destroyed because of the presence of certain exhibits and storage practices.

Dust covers many files. Birds apparently entered the District Court facility and their droppings covered a few files. A cat entered the Magistrate Court facility, was unable to exit, and eventually died, soiling files stored in an open box.

Exhibits stored with the case files include a variety of items of all shapes and sizes. Damage to the case files from the exhibits could occur as there is no order to their arrangement. A falling object could damage several case files.

Lack of security is another short coming of the present facilities. A single heavy padlock is all that stands between the case files and anyone wishing to remove or destroy District Court records. Fire protection and fire fighting equipment are lacking in both facilities. In Gaza, the

situation is similar, that is, a storage room which affords little protection to the files from dust, potential fires and other environmental conditions. Only a few exhibits are stored in this facility.

The judicial branch does not manage its records. It keeps all records indefinitely irrespective of the value of their content. A records retention schedule and a method for prioritizing judicial branch documents is lacking in the Gaza District Court. The need for this vital tool is well justified in the National Center for State Courts publication, *A Guide to Court Records Management*:

“Records retention schedules are the most important and powerful tool available for the basic management of terminated records. Such schedules are simply an approved plan defining which terminated records can be destroyed and when, and which records might have ...value and must be kept permanently. ... Courts that have no records retention schedule, ... operate under a handicap that can only be overcome with large amounts of storage space not a satisfactory solution.”

Therefore, developing and implementing a records retention and destruction schedule is critical and first on the list of priorities in this area.

There is no ongoing program for backing up vital judicial documents. The judicial branch does not apply any of the available recording technologies (microfilm, optical and electronic) for this purpose.

Security and document integrity are only two issues inherent in the present judicial archiving system. Document retrieval is slow and inefficient because of ineffective document classification and storage systems. Written policies and procedures do not exist and no court employee is primarily responsible for this aspect of managing court records.

Obviously, therefore, case management and the administration of justice suffer due to the current judicial archiving system. Information or data important in a legal or judicial administration setting may be lost forever, clouding legal rights, obligations, and/or benefits.

*Recommendation #6: Prepare Appropriate Legislation.*

Many necessary changes in judicial administration must be approved by the Palestinian Council. USAID could assist Palestinian jurists in the preparation of such legislation. Legislation covering the following should be proposed:

- Authority to establish a judicial records management program including records retention and destruction schedules (A retention and destruction policy already exists in the Ramallah but not the Gaza District Court.)
- Use of micrographic, electronic, digital, holographic or other scientifically accepted recording media in managing judicial records/information
- Establish and promulgate information integrity and security standards

- Authorize the use of *certified* copies produced from microfilm, electronic, etc. as documentary evidence in lieu of original documents or certified copies made from original documents
- Authorize judicial records archives headed by a qualified professional archivist

*Recommendations #7 - #11 are projects designed primarily for Palestinians themselves to implement. However, USAID may be in a position to assist in these endeavors.*

*Recommendation #7: Inventory and Evaluate Judicial Records.*

The Supreme Court should inventory and evaluate all judicial records. The objective of the study would be publication of a records retention and destruction schedule based on the value of information contained in judicial records.

The judicial branch must decide the relative value of documents within its domain. The goals of this selection process would be to properly preserve records of legal or historic value and destroy valueless records, thereby eliminating the expense and trouble of storing them. Therefore, once a records retention and destruction schedule is established, a one time program to purge existing files and discharge backlogs should be undertaken.

*Recommendation #8: Establish Task Force for Purging Judicial Records with No Legal, Historical, or Administrative Value.*

The High Court should form a Task Force to determine which documents currently in storage facilities can be purged. The Task Force should be chaired by a current or former Court of Appeals justice. The Task Force should incorporate legal, judicial (including temporary judges), and administrative expertise as needed. Adequate logistical and temporary clerical support would also be provided to the Task Force.

Competency, professionalism, and leadership are as important and valuable in archiving as in managing a case calendar. By providing strong professional leadership, the judiciary will show that these values are important and begin the process of improving the judicial branch archives.

*Recommendation #9: Hire a Professional Archivist.*

To provide leadership and direction, the Palestinian Courts should hire a professional archivist/records manager with proven leadership and management skills. The archives should be consolidated under the archivist/records manager position who would report to the Court's Court Administrator.

Poorly organized and maintained records hamper retrieval. Written policies and procedures do not exist. The result is that records are not readily retrieved and the risk of loss or damage is unacceptably high.

Procedure manuals for each level or stage of the document processing cycle are sorely needed. The lack of this tool, including a records retention schedule, at each phase of a case, from active to inactive, adds to the confusion and accumulation of paper in the archives.

*Recommendation #10: Prepare Procedural Manuals for Clerical Operations.*



Procedures manuals containing applicable policies, classification and indexing schemes, records retention schedules, etc. should be developed to ensure the orderly and efficient operation of the records program including active and inactive storage.

*Recommendation #11: Implement archiving of closed file folders.*

Case files to be archived should be placed in ascending case number order in cardboard boxes. An index card should be created for each file in the storage box. The boxes should be clearly labeled and the address of the storage box noted on the index card. A charge out card should be used when files are borrowed.

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## ANNEX A SCOPE OF WORK

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### A. Activities

USAID/West Bank and Gaza (WBG) will undertake the quick-start, short-term training assistance activity for judges and non-judicial court personnel in the West Bank and Gaza which will target critical procedural and administrative topics. The assistance will lay the groundwork for more comprehensive legal and judicial reform efforts by USAID and other donors, including those to institutionalize training of court personnel.

G/DG will field a team which will design, in consultation with USAID/WBG and Palestinian officials and members of the Palestinian judicial community, an interim judicial training activity and a possible follow-on assistance program. The team will also undertake an assessment of the legal/judicial system that builds upon previous studies by providing more complete and detailed information that can serve as the basis for a comprehensive, integrated program for improving the administration of justice. At the end of the activity the following outputs are anticipated:

#### A1. Inaugural Two Day Conference

A two day conference will be held as the first formal, organized event of the program. It will be attended by judges, non-judicial court personnel, and members of the legal community. Participants will be selected by the advisory panel in conjunction with the mission and other appropriate authorities.

During this event the Training Coordinator and Court Administration Specialist will assist in the identification of legal procedures and administrative operations of immediate interest and priority for the design of the training courses. The conference will approve the courses to be offered. The conference will also provide the appropriate venue in which to finalize arrangements for and announce the existence of the program's advisory panel.

#### A2. Advisory Panel

The primary purpose of the panel is to help establish and to oversee the implementation of the program and any future activities that might flow from it; and to serve as a liaison between the various parties involved in the program. After the panel is formed and begins to assume some decision making responsibilities, it is expected to evolve into a body that can both lobby for and participate in activities and programs to further develop the administration of justice. The panel should, therefore be representative of the different categories of judges, the Ministry of Justice, and, if possible and appropriate, members of legal organizations; its formation should be one of the first and most important tasks of the Training Coordinator; it should be involved in decision making about the substance and procedure of training courses to be offered, as well as assisting in the selection of personnel to attend them; and it should be the primary body involved in

establishing a judicial training institute. A suggested organizational model for the advisory panel is that it consist of representatives of the following bodies:

- Ministry of Justice
- Magistrate's Courts in Gaza, Jericho, and the West Bank
- District Courts in Gaza, Jericho and the West Bank
- High Courts of Appeals in Gaza and Ramallah

### **A3. Training Courses**

The purposes of the training courses are to:

- Enable judges and non-judicial court personnel to improve management of the court system.
- Provide non-judicial court personnel with the skills needed to improve the administrative operations of the court.
- Provide the foundation for a possible, more comprehensive mid or long term training program.

It is envisaged that these courses will have an immediate impact on improving and expediting processing of cases by the courts. In order to do so the subjects offered will include issues in legal procedures and in court administration. The one or two courses offered to both judges and non-judicial court personnel will contain modules, the exact subjects of which will be determined at the two day conference but which may include some combination of the following: Caseflow management; fiscal management; human resources management; technology management; court security management; fine and fee collection; legal procedures; and/or small claims case management.

### **A4. Judicial Reform Commission**

The activity will serve as the basis to explore the establishment of a judicial reform commission that could oversee the development and implementation of a comprehensive AOJ and legal reform program.

### **A5. Judicial Training Institute**

The Training Coordinator, with assistance from the team and following discussions with the Mission and relevant Palestinians, will prepare a report in which the potential costs, benefits and feasibility of establishing a judicial training institute is evaluated. The report will estimate the type and amount of support required and suggest the optimal means by which the institute would be established.

### **A6. Assessment of the Legal/Judicial System**

The Training Coordinator, with assistance from the team, will prepare an assessment of the legal/judicial system that provides information supplementary to that contained in previous

USAID sponsored reports and which can serve as the basis for a program for the general improvement of the administration of justice.

## **B. Personnel and Their Responsibilities and Qualifications**

The team will consist of the following personnel:

- **Training Coordinator (TC).** Will be responsible for the overall supervision of the program, including liaison with USAID/Washington, the Mission, relevant local institutions, and Palestinian legal/judicial personnel and other appropriate individuals. Will also oversee administrative matters for the holding of the conference and training courses; assume primary responsibility for hiring the local legal specialist(s) and bringing into existence and assisting the functioning of the advisory panel; and ensuring coordination of expatriate and local team members, all of whom shall report to the TC. Will also participate in the start up briefing in Washington and draft the report on the activity, which will include an evaluation of the potential costs and benefits and appropriate procedures for establishing a judicial training institute. Will also draft the assessment of the legal/judicial system.

The TC will have prior experience in the West Bank/Gaza, knowledge of the Palestinian legal/judicial system, and have Arabic competence.

- **Court Administration Specialist (CAS).** Will develop an appropriate training program of at least two courses for judges and at least two courses for non-judicial court personnel which will be approved by G/DG through the DIS Project; will present initial proposals for that program at the start-up briefing, which the CAS will attend, and will then coordinate with the DIS Project, the TC, judges, court personnel, the informal advisory panel and local legal specialists in the further development of that program. Will offer training courses to judges and non-judicial court personnel in association with local legal specialists and under the supervision of the TC. Will be responsible for identifying structural inadequacies in court administration and designing practical changes to overcome them. Will provide to the TC information relevant to the evaluation of the proposed judicial training institute and the assessment of the legal/judicial system. The CAS will provide a report on the training activity which will include recommendations for follow on activities.

The CAS will have extensive experience in court administration, including the design and teaching of courses in that field.

- **Local Legal Specialists.** Up to two local Palestinians with relevant legal/judicial backgrounds and who are knowledgeable about local legal structures, institutions and procedures will work under the overall supervision of the TC and will assist the CAS in the preparation, offering, interpreting and translating of training courses and their materials. They will also facilitate contacts between the consultants and Palestinian legal/judicial professionals and will provide immediately upon completion of the training courses written reports to the TC which will assist in the preparation of the overall report on the activity and the assessment of the legal/judicial system.

### **C. Work Plan and Level of Effort**

1. Briefings in Washington with USAID and the TC and CAS (preparation for briefing one day LOE for both TC and CAS, 2-3 days LOE for the briefing).

2. Training Coordinator (TC) travels to WB/G immediately following the briefing and begins networking with legal/judicial personnel and other institutions/individuals involved in AOJ activities. The TC, in coordination with USAID/WBG also begins to facilitate formation of the informal advisory panel and to recruit up to two local legal specialists (one to assist in training of judges and one to assist in training of non-judicial court personnel) and does preparatory work for the inaugural conference, which will be held about four weeks after the TC arrives in the field.

3. The inaugural conference is held. Participants will include Palestinian judges, court personnel, representatives of the Ministry of Justice and, if possible, attorneys in private practice, as well as the Court Administration Specialist (CAS) and the local legal specialists. The two day conference will serve as a venue to introduce the advisory panel and to obtain approval for the training agenda. The CAS will arrive one week prior to the conference to finalize selection of candidates for positions of local legal specialists and to design training/workshop options.

4. The training courses will begin one week after the conference, that interval being required to complete organization and preparation in wake of agreement on topics and schedules reached at the inaugural workshop. The training courses will be offered within a six week period. Their scheduling and content will be decided at the conference. They shall be held at times and in venues to enable participation by judges and non-judicial personnel from all areas of the West Bank, Gaza, and Jericho. If logistical difficulties would prevent attendance at courses held in a single location, then separate courses will be offered for those otherwise unable to attend. Upon completion of the training courses the local legal specialists will provide their written reports; the CAS will in up to three days participate in a briefing of the mission, give assistance to the TC in the preparation of the report by providing both oral comments and a written report on the training activity and recommendations for follow on activities, and will then depart.

5. The TC will commence preparation of the report and the assessment, brief the mission within three days following the completion of the training courses, and will depart. He will submit drafts of the report and the assessment to G/DG within two weeks of his departure. After receiving comments from G/DG and the mission on the draft report and assessment, the TC will have one week in which to prepare the final drafts, which he will submit to D/DG, which will provide the final report and assessment to the mission.

6. The TC may return to the field for up to two weeks in early 1996 in order to present the final draft of the report and the assessment and consult with the mission on follow-up activities.

### **D. Reporting Responsibilities**

G/DG, through its DIS Project and in coordination with USAID/WBG, will oversee implementation of the activity and the TC will report to it. The CAS and local legal specialists will report to G/DG through the TC.

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**ANNEX B**  
**LIST OF WORKSHOP PARTICIPANTS**

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**West Bank**

1. Rima Saba Ishaq, Secretary in the High Court of Appeals, Ramallah
2. Abdelhi al-Laham, Chief Clerk in the Ramallah Magistrate Court
3. Jamil Darwish Hussain, Acquisitions Clerk, Ramallah courthouse
4. Saher al-Barghouti, Clerk in the Ramallah Magistrate Court
5. Omar Hamidan, Lawyer and Chief Clerk in the Ramallah District Court
6. Elias Jallad, Chief Clerk in the Qalqilya Magistrate Court
7. Ziad Aref Abu Sharefeh, Chief Clerk in the Tulkarim Magistrate Court
8. Issam Saleh Mustafa, Clerk, Prosecutor's Office, Tulkarim
9. Salah H. Zuhud, Clerk, Qalqilya Magistrate Court
10. Jamal Sabri Arar, Lawyer and Clerk in Qalqilya Magistrate Court
11. Abdul-razek Abdul-fitah Rabeh, Lawyer and Clerk in Qalqilya Magistrate Court
12. Hamdan Ibaidat, Assistant to the Chief Clerk, Bethlehem Magistrate Court
13. Wail Daud Abed Hawaresh, Clerk, Bethlehem Magistrate Court
14. Yahya Adawi, Clerk, Bethlehem Magistrate Court
15. Abd El-Aziz Shabaneh, Assistant to the Chief Clerk, Hebron District Court
16. Samieh Shaheen, Clerk, Hebron District Court
17. Ghassan Azmi Eshmael El-Bakri, Clerk, Acquisitions, Hebron District Court
18. Muhammad Abdallah, Chief Clerk, Hebron District Court
19. Radwan Rabah, Clerk, Hebron
20. Fahed Omer al-Kawasme, Clerk, Hebron District Court
21. Sohel Hasnen Samri, Clerk, Nablus Magistrate Court
22. Nidal Subuh, Clerk, Nablus Magistrate Court
23. Maha Yamin, Clerk, Nablus District Court
24. Rafiq H. Zuhud, Clerk, Nablus District Court
25. Naser Elden Anabtawi, Lawyer and Clerk, Jenin Magistrate Court
26. Dergham Zaki, Lawyer and Clerk, Jenin Magistrate Court
27. Hani Natour, Judge, Ramallah Magistrate Court
28. Shukri Nashashibi, Judge, High Court of Appeals, Ramallah
29. Abdallah Ghuzlan, Judge, Ramallah District Court
30. Talat Zaid, Judge, Ramallah Magistrate Court
31. Abdel Ghani Awawi, Judge, Hebron Magistrate Court
32. Issam Ansari, Prosecutor, Ramallah courthouse
33. Omar Quasmi, Clerk, Ramallah
34. Mohammed Sider, Judge, Hebron District Court
35. Ass'ad B. Mubarak, Attorney General, Ramallah
36. Hisham Abu Helwah, Notary Public, Ramallah
37. Haytham Zoabi, Lawyer
38. Mohammed Shalback, Lawyer
39. Khalil Y. Ansara, Lawyer
41. Camille Mansour, Director, Birzeit University Law Center
42. Ghassan Faramand, Assistant Director, Bir Zeit University Law Center

## Gaza Strip

1. Mazen Helmi Seisalem, Judge
2. Wahid al-Hayeh, Judge
3. Adnab Said Hasaneh, Acquisitions Clerk, Gaza courthouse
4. Abd al-Hadi Helmi Rajab, Chief Clerk, Gaza District Court
5. Fayek Abd al-Fatah Kasab, Clerk
6. Samih Ja'rour, Prosecutor
7. Hasan Ibrahim al-Jadbah, Judge
8. Yaser Odaah Abu al-A'war, Clerk, Deir al-Balah Magistrate Court
9. Abd al-Karim Mustafa Abu Malik, Chief Clerk, Deir al-Balah Magistrate Court
10. Sa'dah Fawzi al-Dajani, Judge
11. Nahid Munier al-Reyyes, Judge, High Court, and Chief Administrative Officer
12. Zakaria Muhammad Kuhail, Judge
13. Husayn Abu Asi, Judge, Gaza District Court
14. Mahmoud Jaber Abu Roz, Chief Clerk
15. Hasan Husni Arsalan Ahmad, Chief Clerk
16. Yousef Muhammad al-Agha, Execution officer
17. Elham Ibrahim al-Hayak, Clerk
18. Talal Helmi Seisalem, Clerk
19. Ayesh Yousef al-Awawdah, Clerk
20. Amin al-Masri, Clerk
21. Moawia Farajallah, Clerk
22. Abd al-Karim Ali Abu Shawish, Clerk
23. Talal Ahmad al-Barweeni, Clerk
24. Hasan Salim Shamali, Chief Clerk
25. Talib al-Khatib, Chief Clerk
26. Theib Jneed, Clerk
27. Iman Sobhi Boshnaq, Clerk
28. Hasan Abu Libdeh, Director-General, Ministry of Justice
29. Sami al-Ghandoor, Clerk
30. Ismail al-Jarn, Judge
31. Elias Najeeb Tarazi, Clerk
32. Riyadh Migdad, Clerk
33. Aded al-Rahim Nasr, Prosecutor
34. Ismail Nasr al-Souram, Clerk
35. Jamil Juma'a Salama, Prosecutor
36. Ibrahim al-Tartor, Notary Public
37. Roshdi al-Azraq, Traffic Prosecutor
38. Marwan al-Namr, Clerk
39. Fayez Hamad, Prosecutor
40. Nasser Ali

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**ANNEX C**  
**DEMONSTRATION PROJECT RECOMMENDATIONS**

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The following is the list of recommendations which governed the demonstration project in the Gaza and Ramallah District Courts. The demonstration project implemented recommendations #1, 5, 7, 8, 9, and 10. The success of implementation varied according to the recommendation. Recommendations #2, 3 and 4, were beyond the scope of the project to implement, but are suggestive of other relatively simple reforms which can be undertaken easily by the Palestinians themselves to enhance administrative efficiency in each of these courthouses.

The recommendations were based on extensive research in the clerk's office in each of these courthouses. Data gathering focused on operational problems with the current filing systems. For this reason, file initiation, case calendaring and processing, and file storage methods were examined. Court proceedings were observed. Judges, Chief Clerks, most of the personnel working in the Clerk's offices, and other staff, including the Notary Public and Executions Officers in both district courts, were interviewed.

**A. Clerical Operations**

***Finding:** Gaza District Court's clerical staff work suffers due to frequent interruptions.*

The Gaza City Clerk's office is open to the public. Attorneys and others enter the work area at will. This makes it difficult to work steadily, as there are numerous interruptions. While the clerks in Gaza City seem able to locate files when necessary and are generally in command of their work, they complain that the interruptions adversely affects their ability to focus on their work. The interruptions create confusion that can result in misplaced files, documents, and processing errors.

In Ramallah there is a public service counter in the Clerk's office. Clerks attend attorneys and the public from behind the counter that also serves as a work space for attorneys to examine files and take notes. Other clerks are not interrupted by people going directly to their desks to conduct business or ask questions.

The total space in Gaza City and Ramallah Clerks' offices is approximately the same. In Gaza City, the Chief Clerk has a separate office. However, one office door opens into the general work area for his clerks and another door is opens to the main public corridor. Some case files are stored in his office. This means that he, too, is frequently interrupted by the heavy volume of traffic in and out of his office.

***Recommendation #1:** Install a counter in the Gaza City Clerk's Office.*

A counter should be installed in the Gaza City District Court Clerk's office. The counter would permit employees to serve the public while securing the clerical work area against unwanted interruptions. Drawers and work space should be built into the counter for public service clerk(s).



The files should be relocated from the Chief Clerk's office to the cabinets in the main office. This will prevent lawyers and others from disturbing the work space of the clerks, increase the working space available to them, and diminish the traffic in and out of the Chief Clerk's office. The Chief Clerk could close the door into the public hallway and gain privacy to focus on his work. His subordinates would only direct attorneys and others into the Chief Clerk's office in special situations.

***Finding:** Chief Clerks' current duties include lower level clerical tasks.*

The Chief Clerks, both in the Gaza and Ramallah District Courts perform clerical tasks that appropriately belong at lower levels. For example, in Gaza, the Chief Clerk checks every new filing for addresses and names. In addition, the Chief Clerk checks each new civil complaint for a cause of action.

When the public service counter is installed, the clerk receiving a new complaint and other documents should be trained to inspect the incoming documents according to prerequisites or standards. Under modern practice, the opposing parties or their attorneys, not court staff, are responsible for challenging a complaint if it fails to state a cause of action; therefore, this practice should be discontinued.

***Recommendation #2:** Redefine the Chief Clerks' responsibilities and duties.*

The duties discussed above should be reassigned as previously suggested. A job description for the Chief Clerk's position is necessary and a first step to a new organizational structure. The job description should include judges' expectations and delegated responsibilities to the position.

***Finding:** Weaknesses in the organization of the Gaza District Court Clerk's office*

There are six clerks subordinate to the Chief Clerk working with the case files. The Clerk's staff also includes six messengers and the Executions Officer who works in a different part of the building.

Three clerks are responsible for the case files according to the current categories of cases one clerk is responsible for Petitions, one for Rights, one for appeals. A fourth clerk is responsible for tracking and directing the overall flow of work to and from the judges.

This individual is well experienced with over twenty years of service and possesses detailed knowledge of the workings of the district court. This clerk records activities in a separate registry and informs the appropriate clerk of the work to be done when new files are brought to her desk by the Chief Clerk, or returned from court after a hearing or other activity.

Another clerk maintains a register for controlling all correspondence and notices. As is true of other registers in the Clerk's Office, this register is handwritten. The correspondence clerk informs the computer operator/secretary of needed correspondence. Once prepared, the correspondence clerk prepares the correspondence for delivery and makes the appropriate entry in the register.

The sixth clerk functions as the office secretary and is the only staff member trained and capable of using the personal computer in the Clerk's Office. This clerk is responsible for transcribing the court reporter's work into a typewritten form and preparing correspondence and notices as described above.

Clerks perform the same jobs day after day with little if any variety. The clerical functions are characterized by overspecialization which lead to boredom and lack of motivation. The clerks all finish their work well ahead of quitting time and, as a rule, work is not backlogged.

The only break from the daily routine is the need to act as a court reporter. Lack of court reporters to cover all courts requires available clerks to act in this capacity whether qualified or not.

***Recommendation #3: Reorganize the Clerk's Office for better, more effective service.***

Installation of the public service counter will require a clerk to attend the public. The Chief Clerk should reorganize his staff as follows. Transfer the correspondence functions to the office secretary including responsibility for the correspondence register.

Assign new duties to the clerk relieved of the correspondence functions. These duties would consist of attending attorneys and the public at the public counter. Train this clerk to: greet and serve the public; how to inspect and process incoming documents; where to refer members of the public for other than judicial services; and situations when matters may have to be referred to the Chief Clerk.

Three clerks should be assigned to Civil, Criminal and Appeals case files respectively. Active civil, criminal, and appeal case files should be stored separately and readily accessible to each responsible clerk. These clerks should also be trained to handle the public service counter to assist or substitute in the absence of the public service clerk.

The public service and case working functions should all be placed under the senior (fourth) clerk who already acts in a supervisory capacity. The remaining clerks should continue in their present tasks until additional computer support can be obtained.

## **B. Case Filing System Problems**

***Finding: Existing Court Rule regarding case file processing is archaic***

The Gaza District Court operates under Rules of Court promulgated under a British Mandate ordinance. British Mandate ordinances from 1918 to 1940 consistently authorized the Chief Justice of the Supreme Court of Palestine to make rules of court "with the concurrence of the High Commissioner."

The 1936 Rules of Court include matters such as the color of the files and document arrangement within the file. These rules apply only in the Gaza Strip because subsequent Jordanian Civil Procedure replaced the British Mandate laws in the West Bank.

***Recommendation #4: Develop and promulgate modern, uniform Rules of Court.***

The case filing and clerical support systems in the Gaza and Ramallah District Courts differ as they flow from different legal systems. Therefore, the first step in modernizing the case filing systems and supporting clerical operations is a uniform set of rules. It is recommended that the judiciary establish a task force of judges and attorneys to investigate and develop modern, uniform rules of court. The Task Force should also study and recommend legitimate ways of promulgating and implementing the rules in view of the conflicting legal systems.

It is also recommended that the rules include processing standards rather than detailed instruction regarding case filing systems. The rules should give court administrators flexibility to recommend future changes in processing systems to take advantage of new concepts and technologies without requiring changes in legislation or court rules to accomplish such changes.

***Finding: Incongruous case categories.***

The Ramallah District Court separates its case files into three categories: Civil, Criminal and Appeals. The Gaza District Court makes 9 distinctions. These are as follows: 1) "Rights," 2) Land, 3) Criminal, 4) Executions of judgments, 5) Appeals of Rights cases, 6) Appeals of Criminal cases, 7) Bail applications, 8) Personal Status cases and 9) "Petitions."

These are not all separate categories. Personal status cases and bail applications are subcategories of Petitions due simply to the fact that in Arabic the word, Petition, is part of the description of the subcategories of cases. Land cases are a subcategory of Rights as are automobile accident tort cases and shareholder suits.

***Recommendation #5: Harmonize case categories.***

The Ramallah and Gaza City systems should be harmonized into a single, uniform system. The three primary categories of Civil, Criminal and Appeals cases should be made universal. However, the more refined distinctions can be maintained via the case numbering system, if necessary.

The criminal and rights appeals are really subcategories of a broader appeals category. Moreover, the cases currently designated as Petitions are also actually appeals. For example, bail applications are essentially requests by prisoners to have their cases reconsidered and personal status cases are often *de novo* appeals of Christian Gazans from religious courts on inheritance and family law matters. If bail applications and personal status cases cannot be classified as appeals, they could be included in the criminal and civil categories respectively.

While executions can involve the arrest of debtors, they involve the enforcement of civil judgments. As such they are a subcategory of civil cases. Rights cases are also all civil matters. Operationally, executions differ from other civil cases as they seldom require judicial action.

The current case file designations in the Gaza District Court are unnecessary. There seems to be no operational justification for such a system. The subcategories may require different work by the clerks although substantive differences were not evident.

In the future, it may be helpful to track the amount of work done on different case types, or to direct certain types of cases into distinct case management systems or calendar days. Then subcategories would be necessary and could be accomplished through the case numbering system.

***Finding: Case numbers are not unique.***

The numbering system used is sequential and strictly numerical. It identifies the year, but not the type of case. While this is adequate for purposes of identifying and tracking the file, it could be improved to quickly convey further information about the file and to facilitate data collection about certain types of cases.

***Recommendation #6: Identify the type of case in the number.***

Adopt a numbering system which includes identification of the type of case. For example, under the present system the number 96 1 will be assigned to the first case next year irrespective of the case type. Under the proposed system the first land case would be assigned the number 96 1 L. If the next case filed is a rights case it would be assigned the number 96 2 R, and so on. This numbering system depends on the establishment of a strict nomenclature for cases.

***Finding: Poorly designed and constructed Case File Folders.***

The file folders used at the Gaza City and Ramallah District Courts are poorly designed. They age poorly, and often disintegrate over time. They are unmarked, generic colored folders. Case types are identified by the color of the folder, and handwritten notes on the covers identify the case number, parties, attorneys, and a history of the proceedings.

***Recommendation #7: Redesign the case folder using more durable material and preprinting case numbers and other standard case information.***

The quality of material used for filing folders should be upgraded to a more durable, tougher substance. Certain information should be preprinted on the covers and space provided to enter other information. For example, case number and case type should be preprinted; space should be provided to enter the filing date, plaintiffs, defendants, or appellants and appellees names, and other standard information. Color coding should be retained.

***Finding: Inadequate and disparate case history record.***

In Gaza, case history is handwritten on the file cover. As new dates for hearings are set the Judge or clerk writes them down on the cover. There is a back up system. One clerk is assigned the job of entering such activities in a registry which incorporates the daily court calendars and records the dispositions or new dates.

In Ramallah, certain information is preprinted on the cover of the folder. The file folders contain columns for entering other information. Here too other parts of the folder cover are used to note future hearing dates.

***Recommendation #8: Provide preprinted columns on the inside of the case folder to record case history.***

Use a file folder that includes pre printed columns for recording case activities. The inside of the folders should have columns for entering actions, dates, document entered or hearing held, and comments.

***Finding: Disparate recording of information on case file folders.***

In Gaza City, the subject matter currently handwritten on the covers of files varies significantly depending on the type of case. These variations are matters of ingrained practice.

As stated previously, the Ramallah District Court uses file folders with certain information preprinted on the cover. This is another area where practices between the two courts differ and can easily be reconciled.

***Recommendation #9: Unify types of recorded information on new folders.***

When the new files are manufactured, the covers should allow for the entry of different information depending on the type of case as follows:

- **Appeals.** Appellate files should identify the District of their origin, the type of appeal, the names and addresses of the appellant and appellee or their attorneys, the judgment appealed and the date of filing as well as those of any hearings.
- **Civil.** Civil files should identify the District, the case's origin, the type of case, the names and addresses of the plaintiff and defendant or their attorneys, the amount of the claim, and the dates of filing and any hearings.
- **Criminal.** Criminal files should identify the District having jurisdiction, the accused, the accusation, and the dates of filing and any hearings.
- **Executions.** Execution files should identify the District in which the judgment is being executed, the name of the prevailing party and the executee, the judgment and its date, and the dates of filing and any hearings.

***Finding: Inefficient record of related motions.***

If an attorney files a motion regarding a related issue to the main case, the written motion is placed in a separate file folder. These motion files are inserted into the main case file and obtain some level of distinct existence from that of the main case. This may be symptomatic of court proceedings which seem disjointed. Judges proceed with cases a bit at a time at the District Court level, finding it inconvenient to take an entire day to cope with entire cases.

***Recommendation #10: New system of identifying motions in case file.***

Replace the use of a separate folder with a tabbed cover for identifying discrete sections of the file. Thus, while documents would be entered chronologically, distinct issues could be readily

accessed while the sequence of events and submission of documents could be readily ascertained from reference to the inside cover's record of events.

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## ANNEX D REFORMERS LIST

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The following is a list of individuals with whom Project Team members personally interacted and who are felt by the Team members to be interested in and serious about reform in the legal sector. We recommend that future project teams seek out these individuals and work with them in implementing projects in this sector. This is not a complete list of reformers in this sector, nor is the presentation order significant.

### *Advisory Panel Members*

1. All members of the Bir Zeit University Law Center, including Camille Mansour and Ghassan Faramand
2. Ali Khasan
3. Nabil Mushahwar
4. Hani Natour
5. Shukri Nashahibi
6. Ibrahim al-Daghma
7. Hasan Abu Libdeh
8. Husayn Abu Asi
9. Tawfiq Abu Ghazaleh

### *Other Judges*

10. Amin Abd al-Salam
11. Farid Muslih
12. Tal at Zaid al-Tawil
13. Khalil al-Silwani
14. Nassar Mansour

### *Other Lawyers*

15. Mary Rock
16. Heba Husayni
17. Yasser Jabber
18. Ibrahim Barghouti
19. Raja Shehada
20. Khalil Ansara

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**ANNEX E**  
**ILLUSTRATIVE BUDGET FOR JUDICIAL TRAINING CENTER**

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This section provides an estimate of the costs involved for the establishment of a Judicial Training Institute in Gaza City. At present, the Palestinian legal system remains divided into two discrete and distinct legal systems, one in Gaza and one in the West Bank. This and other factors led the team to recommend against the establishment of a Judicial Training Institute at this time. However, should the Mission decide against this recommendation and move forward immediately to found an institute, it would still not be practical to construct a building to house the institute. Until the final shape of the unified Palestinian legal system is known, it is impossible to foresee the training needs of the legal community. For this reason, the Mission would be wasting valuable funds in constructing a building whose final purpose and capacity is not known. Furthermore, due to the recent shortage of cement and other construction supplies in Gaza, the time necessary for construction would certainly be considerable.

Given these constraints, we have estimated a budget based on renting the space for the institute. However, it is not possible at present to identify a specific building in Gaza as suitable for housing the institute. Because of the continuing problem of unclear lines of authority, no partner in the Palestinian Authority has been identified to assume a leadership role in the creation of the institute. It is assumed that, should a government agency, such as the Ministry of Justice, be identified as a partner, they will wish to provide some input into the location of the institute. Therefore, only a rough estimate of office rent has been provided, which can be made more precise once the Mission and the cooperating Palestinian agency have identified a site.

Should the Mission decide against the recommendations, and move forward in immediately creating the Judicial Training Institute, it must be noted that the establishment of an institute in Gaza City will serve the purpose of training only the Gaza legal community. The West Bank legal community would not benefit in training in a legal system foreign to their own. It is possible that the Institute could attempt to train in general administrative matters relevant to both communities. However, given the geographic separation of the two groups, complicated by the current closure of both Gaza and the Palestinian areas of the West Bank, it is unlikely that court personnel from the West Bank would be able to regularly attend the training even if it was relevant to them. Therefore, should the Mission wish to train members of the West Bank legal community, a duplicate institute with courses relevant to West Bank legal codes must be established, possibly in Ramallah. Of course, members of both legal communities will have to be retrained in the unified legal code, which is likely to be completed no sooner than two years from now.



# West Bank/ Gaza Judicial Training Institute

## Illustrative Budget

	Total
I. Technical Assistance	
A. Long Term	
Team Leader	\$85,000.00
Court Administration Specialist	\$85,000.00
Legal/Judicial Specialist	\$85,000.00
Training Specialist	\$85,000.00
B. Local Professional	
Judicial System Specialist	\$30,000.00
Judicial Training Specialist (2)	\$50,000.00
Office Administrator	\$24,000.00
Engineer/Architect	\$6,666.67
C. Long term local support staff	
Administrative Assistant (2)	\$13,000.00
Translator	\$15,000.00
D. Allowances	
Post Differential	\$15,043.84
TQSA	\$25,020.00
E. Administrative-Misc.	
DBA Insurance (Base = Salaries + Post Diff.)	\$773.50
Medical Evacuation Insurance	\$816.00
Passport/Visas/Work Permits	\$750.00
Medical Exams	\$1,200.00
Subtotal, Technical Assistance	\$522,270.00
II. Travel	
A. International Travel	\$7,495.80
B. Local Travel	\$13,500.00

West Bank/ Gaza Judicial Training Institute	
Subtotal, Travel	\$20,995.80
III Other Direct Costs	
A. Communications	\$6,000.00
B. Equipment Maintenance	
Office Equipment	\$1,200.00
Computer Service	\$2,400.00
C. Administrative Costs	\$600.00
D. Reproduction Costs	\$6,000.00
E. Expendable Supplies	\$16,080.00
F. Office Rent	
Institute	\$37,200.00
Team Start-up Office	\$2,000.00
G. Utilities and Maintenance	\$15,150.00
H. Meeting Expenses	\$1,200.00
I. Site Preparation\Set-up	\$15,000.00
J. Legal Library	\$2,400.00
K. Contingency	\$2,400.00
Subtotal, ODCs	\$107,630.00
IV. Equipment	
A. Computer Equipment	
Hardware	
Network	\$22,265.00
Work Station	\$53,973.00
Software	
Network	\$3,389.00
Training Work Station	\$2,080.00
Office Work Station	\$4,466.00
B. Furniture	
Offices/Reception	\$12,964.00
Training Rooms	\$9,315.00
C. Other Equipment	
Offices	\$17,000
Training Rooms	\$5,625
Subtotal, Equipment	\$131,077.00
GRAND TOTAL	\$781,972.80